

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NATHANIEL VERGARA,¹

Plaintiff,

v.

No. 11-cv-0764 MCA/SMV

**CAROLYN COLVIN,²
Acting Comm'r of SSA,**

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 47] ("PF&RD"), issued on July 14, 2014. On reference by the Court, [Doc. 46], the Honorable Stephan M. Vidmar, United States Magistrate Judge, recommended granting Plaintiff's Motion for Attorney Fees Under Equal Access To Justice Act [for Work Before the District Court], with Supporting Memorandum [Doc. 38] and granting Plaintiff's Motion for Attorney Fees . . . Under the Equal Access to Justice Act, 28 U.S.C. § 2412 [for Work Before the Appellate Court] [Doc. 39]. No objections were filed, and the time for doing so has passed. Accordingly, the Court will adopt the PF&RD.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Magistrate Judge's Proposed Findings and Recommended Disposition [Doc. 47] are **ADOPTED**.

¹ Nathaniel Vergara has been substituted for Marion Loera, on behalf of N.V. See [Doc. 35-1].

² On February 14, 2013, Carolyn Colvin became the Acting Commissioner of Social Security and, therefore, has been substituted for Commissioner Michael J. Astrue as Defendant in this action. See Fed. R. Civ. P. 25(d)(1) (permitting such substitutions).

IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees Under Equal Access To Justice Act [for Work Before the District Court], with Supporting Memorandum [Doc. 38] is **GRANTED**. Plaintiff Nathaniel Vergara is authorized to receive \$5,463.60 for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that Plaintiff's Motion for Attorney Fees . . . Under the Equal Access to Justice Act, 28 U.S.C. § 2412 [for Work Before the Appellate Court] [Doc. 39] is **GRANTED**. Plaintiff Nathaniel Vergara is authorized to receive \$8,665.58 for payment to his attorney for services before the Tenth Circuit Court of Appeals, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning*, 510 F.3d at 1255.

IT IS FURTHER ORDERED that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

IT IS SO ORDERED.



M. CHRISTINA ARMIJO
Chief United States District Judge